

REMARKS

Claims 5-8, 15, 16 and 19 were pending in the present application and were rejected on various grounds. Claims 5, 15 and 16 are amended.

Claims 5 - 8, 15, 16 and 19 were rejected under 35 USC 112, first paragraph. Applicant amends claims 5, 15 and 19 to more clearly claim the present invention and to expedite the prosecution. Although Applicant believes support overcoming the rejections under 35 USC 112 exists in the present application, Applicant amends claims 5, 15 and 16 to specifically incorporate referenced application language or remove offensive language recited by the Examiner in her rejection to the amended claims. Applicant therefore believes that the rejection of claims 5 - 8, 15, 16 and 19 under 35 USC 112, first paragraph, is overcome.

Claims 5 - 8, 15, 16, and 19 were rejected under 35 USC 103(a) as being unpatentable over Dubrul ('115) in view of Brown ('199) and Hieshima ('558). In the rejection, the Examiner asserts that the claimed step of determining artery nominal size is provided by a mere cross-section drawing, Dubrul Fig. 1 "size near" references 10 and 12, and further that Dubrul discloses the hoop stent to have an open spacing greater than the rest of the hoop stent spacing, but admits that Dubrul does not disclose a primary coil shape. The Examiner relies on Brown as being in the same field as hoop stents for placement in the blood vessels, and having both a primary and a secondary coil "...to provide increased strength to support a vessel..." and relies on Neuss ('274) for showing primary and

secondary loops.

Dubrul is apparently completely silent regarding the claimed steps of determining an artery structure nominal opening size and instilling memory retaining said nominal opening size properties into said preformed hoop. Applicant argues that a mere cross-section drawing location 'near' a reference number, especially without any measurement means shown or even suggested, does not provide the disclosure necessary to support the Examiner's conclusions. Moreover, Dubrul consistently teaches expanding the stents with an expandable balloon, (e.g. col 8, line 63) from which the presently claimed "delivery means for constraining said secondary coil into a linear configuration" is clearly patentably distinguishable and incompatible with combination with Brown and Neuss to provide the presently claimed invention.

Applicant further argues that the teaching and function of Brown is applied to an entirely different purpose and class of stents, that being providing for occluding and retaining material proximal to aneurism and thus does not "reform and radially support" the vessel as claimed.

Applicant further argues that Neuss is also silent on any capacity or suggestion to allow the claimed instillation of a memory to any determined hoop size, or to be combined with any other teaching.

Regarding the Examiner's response to Applicant's prior arguments stating "...the teachings of Dubrul and Brown are combinable as they refer to the same general field of study,

helically wound wire stents for blood vessels[.]", Applicant believes that the references are not combinable merely because they may be the same general field. Moreover, Dubrul and Brown are in fact not combinable because they are clearly and inherently incompatible in combination, they address entirely different sub-fields of stents, e.g. Dubrul regarding *stenosis* and Brown occluding *aneurysms*, that one of ordinary skill in the art would not have combined the disparate types of stents except according to the present invention, that such combination would render either reference inoperative, and that no suggestion of such argued combination is provided.

The claims 6 - 8, 15, 16 and 19 provide additional inventive features to further patentably distinguish the present invention. Applicant therefor believes that the rejection of claims 5 - 8, 15, 16, and 19 under 35 USC 103(a) as being unpatentable over Dubrul ('115) in view of Brown ('199) and Hieshima ('558) is overcome.

Claims 5 - 8, 15, 16, and 19 were rejected under 35 USC 103(a) as being unpatentable over Neuss ('274) in view of Fischell ('507). The Examiner asserts that Neuss discloses the method substantially as claimed but admits that Neuss does not discuss whether the vessel is occluded, but that such is shown in Fischell, and that it would have been obvious to combining Neuss's method of implanting with Fischell's teaching of placement into occluded vessels to provide the claimed method.

Both Neuss and Fischell are apparently completely silent regarding the claimed steps of determining an artery structure

nominal opening size and instilling memory retaining said nominal opening size properties into said preformed hoop. Fischell winds in an uncontrolled manner (col 4, lines 1-3) a wire on a core 22 which ultimately expands unrestrained between 1.1 to 5.0 times the size when disposed on the core 22. Neuss apparently is completely silent on any consideration of nominal vessel size or shape and any process or facility to instill memory into the implant. Applicant further notes that this claim limitation has been previously presented and reference in a prior outstanding rejection, above, to the claimed step of instilling a memory has been made, but not referred to in this rejection. Applicant therefore believes that rejection of claims 5 - 8, 15, 16, and 19 were rejected under 35 USC 103(a) as being unpatentable over Neuss ('274) in view of Fischell ('507) is without support and should be withdrawn, or in the alternative, is overcome.


Claims 5 - 8 were rejected under 35 USC 103(a) as being unpatentable over Hieshima ('558) in view of Brown et al ('199). The Examiner argues that Hieshima discloses the method substantially as claimed, except that only the secondary coil is shown, and that Brown teaches both primary and secondary coils and would be obvious to be combined with Hieshima to provide the present claimed invention.

Applicant argues that absent explicit teaching, the specific wire taught in Hieshima may be incapable of being formed into a first and a second coil, and further that Hieshima heat-treats the wire only to form the single coil stent of Fig. 1, apparently being

silent regarding the claimed steps of determining an artery structure nominal opening size and instilling memory retaining said nominal opening size properties into said preformed hoop, previously presented. The claims 6 - 8 provide additional inventive features to further patentably distinguish the present invention. Applicant therefore believes that the rejection of claims 5 - 8 under 35 USC 103(a) as being unpatentable over Hieshima ('558) in view of Brown et al ('199) is without support and should be withdrawn, and in the alternative, overcome.

Applicant, having substantially amended the Claims to incorporate the wording recited by the Examiner or remove the wording offensive to the Examiner and to expedite the prosecution, and having distinguished the present invention over the cited art of record, and having further argued claim limitations previously presented, believes that all objections and rejections are overcome and that the present application is in condition for allowance. Applicant respectfully requests that full reconsideration of the application and above arguments be provided, and the present application be allowed. The Examiner is invited to call the Applicant's undersigned attorney should she feel that such a call would further the prosecution of the present application.

Respectfully submitted,
R. Edward Winters


By Joanne M. Martin, Reg. No. 29,328
40 North Spring Street
Concord, NH 03301-3902
603 228 1611 Email: JMM@venue1.com
Date 10 Feb 09